



**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: EA/07364/2017

**THE IMMIGRATION ACTS**

**Heard at Cardiff Civil Justice Centre**

**Decision & Reasons  
Promulgated  
On 16 May 2019**

**On 11 April 2019**

**Before**

**UPPER TRIBUNAL JUDGE GRUBB**

**Between**

**METIN [K]**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr C Howells, instructed by Qualified Legal Solicitors  
For the Respondent: Mrs H Aboni, Senior Home Office Presenting Officer

**DECISION AND REASONS**

**Background**

1. The appellant is a citizen of Turkey who was born on 15 January 1981. He arrived in the United Kingdom on 7 November 2000. He unsuccessfully claimed asylum and two appeals were dismissed by Immigration Adjudicators on 18 September 2003 and 4 November 2004 respectively.
2. On 10 March 2017, the appellant applied for a residence card as the spouse of an EEA national, [MS] who is a citizen of Hungary and whom the

appellant married on 27 February 2017. The application was made under the Immigration (EEA) Regulations 2016 (SI 2016/1052) (the “2016 Regulations”).

3. On 16 August 2017, the Secretary of State refused that application on grounds of public policy under reg 24 (read with reg 27) of the 2016 Regulations. The basis for that decision was that the appellant represented a “genuine, present and sufficiently serious threat affecting [a] fundamental interest of society” as a result of his conviction under s.20 of the Offences Against the Person Act 1861 on 29 May 2015 at Cardiff Crown Court for which he was sentenced to a term of 24 months’ imprisonment. The Secretary of State concluded that the refusal of the appellant’s residence card was proportionate applying reg 27(5).
4. The appellant appealed to the First-tier Tribunal. That appeal was heard by Judge A E Walker on 12 January 2018. Having heard evidence from both the appellant and his wife, Judge Walker dismissed his appeal on the basis that the refusal to issue him a residence card was “justified on grounds of public policy and is proportionate as defined in the regulations” (at para 52).
5. The appellant sought permission to appeal to the Upper Tribunal which was granted by the First-tier Tribunal (Judge Lambert) on 11 June 2018.
6. The appeal was initially heard in the Upper Tribunal on 20 November 2018 by UTJ King TD. In a decision promulgated on 13 December 2018, UTJ King set aside the First-tier Tribunal’s decision on the basis that the First-tier Tribunal had materially erred in law.
7. The appeal was adjourned in order to be relisted for a resumed hearing. A transfer order was made and the appeal initially was listed before me on 15 February 2019. However, that hearing had to be adjourned because, at that time, both the appellant and his wife were to give evidence and the necessary interpreters were not available.
8. The appeal was again listed before me on 11 April 2019. Again, unfortunately, a Turkish interpreter was not available. However, following discussions between Mr Howells (who represented the appellant) and Mrs Aboni (who represented the respondent) both were content that the hearing should proceed on submissions only. Mrs Aboni indicated that she did not wish to cross-examine either the appellant or sponsor.
9. The appeal hearing, therefore, proceeded on that basis. I heard oral submissions first from Mrs Aboni and secondly from Mr Howells.

## **The Law**

10. Regulation 24(1) of the 2016 Regulations provides that:

“The Secretary of State may refuse to issue, revoke or refuse to renew a registration certificate, a residence card, a document certifying permanent

residence or a permanent residence card if the refusal of revocation is justified on the grounds of public policy, public security or public health, or on grounds of misuse of rights in accordance with Regulation 26(3).”

11. Regulation 27 sets out the basis upon which an EEA decision, such as the one under challenge in these proceedings, may be taken on the grounds of “public policy, public security or public health”. So far as relevant, reg 27 provides as follows:

**“Decisions taken on grounds of public policy, public security and public health**

- 27.—(1) In this regulation, a “relevant decision” means an EEA decision taken on the grounds of public policy, public security or public health.
- (2) A relevant decision may not be taken to serve economic ends.
- ....
- (5) The public policy and public security requirements of the United Kingdom include restricting rights otherwise conferred by these Regulations in order to protect the fundamental interests of society, and where a relevant decision is taken on grounds of public policy or public security it must also be taken in accordance with the following principles—
- (a) the decision must comply with the principle of proportionality;
  - (b) the decision must be based exclusively on the personal conduct of the person concerned;
  - (c) the personal conduct of the person must represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society, taking into account past conduct of the person and that the threat does not need to be imminent;
  - (d) matters isolated from the particulars of the case or which relate to considerations of general prevention do not justify the decision;
  - (e) a person’s previous criminal convictions do not in themselves justify the decision;
  - (f) the decision may be taken on preventative grounds, even in the absence of a previous criminal conviction, provided the grounds are specific to the person.
- (6) Before taking a relevant decision on the grounds of public policy and public security in relation to a person (“P”) who is resident in the United Kingdom, the decision maker must take account of considerations such as the age, state of health, family and economic situation of P, P’s length of residence in the United Kingdom, P’s social and cultural integration into the United Kingdom and the extent of P’s links with P’s country of origin.

....

- (8) A court or tribunal considering whether the requirements of this regulation are met must (in particular) have regard to the considerations contained in Schedule 1 (considerations of public policy, public security and the fundamental interests of society etc.).”

12. Schedule 1 to the 2016 Regulations, referred to in reg 27(8), provides as follows:

“SCHEDULE 1

CONSIDERATIONS OF PUBLIC POLICY, PUBLIC SECURITY AND THE FUNDAMENTAL INTERESTS OF SOCIETY ETC.

**Considerations of public policy and public security**

1. The EU Treaties do not impose a uniform scale of public policy or public security values: member States enjoy considerable discretion, acting within the parameters set by the EU Treaties, applied where relevant by the EEA agreement, to define their own standards of public policy and public security, for purposes tailored to their individual contexts, from time to time.

**Application of paragraph 1 to the United Kingdom**

2. An EEA national or the family member of an EEA national having extensive familial and societal links with persons of the same nationality or language does not amount to integration in the United Kingdom; a significant degree of wider cultural and societal integration must be present before a person may be regarded as integrated in the United Kingdom.
3. Where an EEA national or the family member of an EEA national has received a custodial sentence, or is a persistent offender, the longer the sentence, or the more numerous the convictions, the greater the likelihood that the individual’s continued presence in the United Kingdom represents a genuine, present and sufficiently serious threat affecting of the fundamental interests of society.
4. Little weight is to be attached to the integration of an EEA national or the family member of an EEA national within the United Kingdom if the alleged integrating links were formed at or around the same time as—
  - (a) the commission of a criminal offence;
  - (b) an act otherwise affecting the fundamental interests of society;
  - (c) the EEA national or family member of an EEA national was in custody.
5. The removal from the United Kingdom of an EEA national or the family member of an EEA national who is able to provide substantive evidence of not demonstrating a threat (for example, through demonstrating that the EEA national or the family member of an EEA national has successfully reformed or rehabilitated) is less likely to be proportionate.

6. It is consistent with public policy and public security requirements in the United Kingdom that EEA decisions may be taken in order to refuse, terminate or withdraw any right otherwise conferred by these Regulations in the case of abuse of rights or fraud, including—
  - (a) entering, attempting to enter or assisting another person to enter or to attempt to enter, a marriage, civil partnership or durable partnership of convenience; or
  - (b) fraudulently obtaining or attempting to obtain, or assisting another to obtain or to attempt to obtain, a right to reside under these Regulations.

**The fundamental interests of society**

7. For the purposes of these Regulations, the fundamental interests of society in the United Kingdom include—
  - (a) preventing unlawful immigration and abuse of the immigration laws, and maintaining the integrity and effectiveness of the immigration control system (including under these Regulations) and of the Common Travel Area;
  - (b) maintaining public order;
  - (c) preventing social harm;
  - (d) preventing the evasion of taxes and duties;
  - (e) protecting public services;
  - (f) excluding or removing an EEA national or family member of an EEA national with a conviction (including where the conduct of that person is likely to cause, or has in fact caused, public offence) and maintaining public confidence in the ability of the relevant authorities to take such action;
  - (g) tackling offences likely to cause harm to society where an immediate or direct victim may be difficult to identify but where there is wider societal harm (such as offences related to the misuse of drugs or crime with a cross-border dimension as mentioned in Article 83(1) of the Treaty on the Functioning of the European Union);
  - (h) combating the effects of persistent offending (particularly in relation to offences, which if taken in isolation, may otherwise be unlikely to meet the requirements of regulation 27);
  - (i) protecting the rights and freedoms of others, particularly from exploitation and trafficking;
  - (j) protecting the public;
  - (k) acting in the best interests of a child (including where doing so entails refusing a child admission to the United Kingdom, or otherwise taking an EEA decision against a child);
  - (l) countering terrorism and extremism and protecting shared values.”

13. It was common ground before me that the burden of proving that the decision taken against the appellant is justified on public policy grounds lies upon the Secretary of State to establish on a balance of probabilities (see, Arranz (EEA Regulations – deportation – test) [2017] UKUT 00294 (IAC) (McCloskey P and Supperstone J)).

### **The Issues**

14. It was common ground between the parties that the two issues I have to determine are:
- (1) whether the appellant’s personal conduct (arising from his s.20 conviction in 2015) establishes that he represents a “genuine, present and sufficiently serious threat affecting one of the fundamental interests of society, taking into account past conduct of the person and that the threat does not need to be imminent” (reg 27(5)(c)); and
  - (2) if his conduct does represent such a threat, whether the decision to refuse him a residence card complies with the principle of proportionality (reg 27(5)(a)).
15. At the previous adjourned hearing, the issue had been floated, as it had been raised by UTJ King in his determination, whether the appellant was entitled to rely upon the “serious grounds” of public policy based upon the fact that his relationship with his (now) wife extended for at least five years although they had only married in February 2017. At that hearing, I drew to the parties’ attention the Court of Appeal’s decision in Mcastena v SSHD [2018] EWCA Civ 1558. In that case, the Court of Appeal held that an individual could not acquire the necessary five years’ residence to establish a permanent right of residence in EU law, such that a decision had to be justified on “serious grounds” of public policy, by accumulating an earlier period in a “durable relationship” prior to the period of marriage (and see now SSHD v Aibangbee [2019] EWCA Civ 339). In the light of that decision, Mr Howells did not pursue the argument that the appellant could establish a permanent right of residence and, therefore, the decision under appeal could only be justified on “serious grounds” of public policy.

### **Discussion and Findings**

16. In reaching my findings, I have had regard to all the material to which I was referred by both representatives. Neither the appellant nor his spouse gave oral evidence before me and Mrs Aboni indicated that she did not wish to cross-examine either of them. Their evidence is, therefore, set out in their respective witness statements at pages 5–14 of the first bundle and 1–6 of the supplementary bundle (the appellant) and pages 15–20 of the first bundle and pages 7–10 of the supplementary bundle (the appellant’s spouse). In addition, the record of their oral evidence given at the First-tier Tribunal hearing is contained within the determination of Judge Walker at paras 50–18.

17. I turn now to deal with the first issue, namely whether the appellant represents a “genuine, present and sufficiently serious threat affecting one of the fundamental interests of society”.
18. The appellant was convicted at the Merthyr Crown Court on 25 May 2015 of the offence contrary to s.20 of the Offences Against the Person Act 1861 of wounding or inflicting grievous bodily harm. He was sentenced by the Recorder of Cardiff (HHJ Rees) to a sentence of seventeen months’ imprisonment. He pleaded guilty to the offence on, it is accepted, a “full facts basis”. The circumstances of the offence are set out in HHJ Rees’ sentencing remarks as follows:

“You had been in a relationship with this [C]. You had lived together at that address, as I understand. But by 4<sup>th</sup> December the relationship was at an end, and she had a new partner, the victim in this case, [Mr H]. There was some kind of party at the address and perhaps because of that, and it would appear in a jealous rage, you went to the premises. You were denied entry. In fact she had gone to bed and so had [Mr H]. [Mr H] was asleep in fact. You smashed the front door to gain entry. She asked you to leave. You took a knife from the kitchen, pursued her to the bedroom. She could not stop you coming in. You grabbed her by the throat and she felt something against her neck. [Mr H], who had been asleep, awoke, and you attacked him, swinging around with the knife, and he was stabbed to the abdomen and then to the leg.

You said to her, ‘If I can’t have you no one will.’ Then in a cowardly way you fled the country. Then for [C] the impact was such that she felt obliged to leave the flat, lost the bond. She was too frightened to go back. Fortunately for [Mr H] the injuries were not as serious as they might have been. But I make it clear there are so many aggravating features in this case the fact that the injury was not serious or permanent is outweighed by those aggravating features. This was the early hours of the morning. The man was in his bed. You forced your entry into the premises. You went and fetched a knife and he was attacked. There is no doubt that this falls within Category 1, and given those number of aggravating features it goes towards the top of that particular category.

I take into account that you have no previous convictions. I allow you full credit for the plea. Taking all those into account the sentence is one of 27 months’ imprisonment. Half way through the sentence you would normally be released on licence, but I have a letter here from the police indicating that the Immigration Enforcement (?) Department will seek to deport you, and it may be that you will not be immediately released at that point. That is a matter for them. That concludes the matter. Thank you.”

19. As I have said, the appellant pleaded to that offence on a “full facts basis” and was sentenced on that basis.
20. Subsequently, however, the appellant sought to put forward a different account recorded in the OASys Report of 2 September 2015 and in his evidence before Judge Walker. This is recorded at paras 38-42 of her determination as follows:

“38. The 02.09.2015 OASys report states that the information supplied by the appellant was that he and his then girlfriend argued and as a result he left the property and went to stay with friends for a few days. On the

night of the offence the girlfriend had gone out clubbing with some friends and had taken a male and several others back to her property to continue partying. The appellant claims that the girlfriend rang him and he went to the property to pick up some clothes that he had left there. When he arrived people at the property had become abusive towards him so he had gone to the kitchen to arm himself with a knife for his own protection and had gone to the bedroom to collect his clothes but had been unable to enter. When he eventually was able to enter he found his girlfriend in bed with the victim who the appellant states was extremely intoxicated and who attacked the appellant and at that point the appellants had used the knife to stab the victim in self-defence. The report states that the author assessed the appellant as angry when he went into his ex-girlfriend's bedroom when he found her in bed with another man and the victim had been unarmed. The report author noted that the offence had occurred in 2005 with no further offending in the intervening time. The report author noted that there seemed to be no concerns about violence in the appellant's relationship with the sponsor. It was noted that had the report been compiled at the time of the offence then there would have been concerns about the appellant's thinking skills and impulsivity, temper control and aggression. However because of his low scores he did not meet the criteria for the thinking skills programme in custody but that he could have some one-to-one work in the community during his licence period. Overall his attitudes were not assessed as linked to offending or risk. His overall risk of reoffending was low. The report author considered that there was a risk in confrontational situations where the appellant suspected that his partner was being unfaithful or where he perceives that someone is threatening or attacking him and that if his partner were to be unfaithful and the appellant were to find out then this would increase the risk. The report author states that the offence seems to have been an isolated incident of a violent outburst. Overall the appellant was considered to be at low risk but there was a medium risk to a known adult. This assessment means that the appellant has the potential to cause serious harm but is unlikely to do so unless there is a change in circumstances for example relationship breakdown. The report author recorded that the appellant said that he stresses very easily and gets angry when under stress.

39. In the mitigation it was said on the appellant's behalf that he was a love struck 24 years old and he had gone to the house where his ex-girlfriend was in order to find out if she was seeing someone else. By the time that he got to his ex-girlfriend's bedroom he was aware that there were a lot of people sleeping over in the lounge and when he reached the bedroom he found [Mr H] there with the ex-girlfriend and so the appellant had gone back to the kitchen to fetch a small kitchen knife because he thought that [Mr H] was bigger and stronger than he was and so the appellant had decided to arm himself with a knife. [Mr H] was woken by the ex-girlfriend screaming hysterically and that [Mr H] traded punches and had even got the better of the appellant. The appellant swung the knife around him. [Mr H] was stabbed in the stomach and in the leg. It is said that the appellant had entered the bedroom because he wanted to talk to his ex-girlfriend and effect a reconciliation. In spite of the location of the injury [Mr H] was not seriously injured.
40. In his sentencing remarks His Honour Judge Rees said that on the date of the assault the relationship; between the appellant and [C] was at an end and she had a new partner. There was a party at [C's] address and perhaps because of that the appellant in a jealous rage had gone to the



premises. The victim was asleep in fact and the appellant smashed the front door to gain entry. [C] asked him to leave and he had taken a knife from the kitchen and pursued her to the bedroom and she could not stop him from coming in. The appellant had grabbed her by the throat and she had felt something against her neck. The victim had then woken up and the appellant attacked him, swinging around with the knife which resulted in the victim being stabbed in the abdomen and in the leg. The appellant had said "If I can't have you no one will". Then in a cowardly way the appellant had fled the country. As a result of this incident [C] had felt the need to leave the flat and was too frightened to return. The victim's injuries were not as serious as they might have been. The Learned Judge said that there were so many aggravating features in the case that the fact that the injury was not serious or permanent is outweighed by the aggravating features. The attack had occurred in the early hours of the morning and the victim had been in bed and the appellant had forced his way into the premises. He had fetched a knife and the knife had been used by the appellant in the attack.

41. Of course the version of events given in the OASys reports is also inconsistent with the mitigation put forward at the sentencing hearing because in the latter it was said on the appellant's behalf that the girlfriend had been asleep and this is not consistent with her having invited the appellant around as was said in the OASys reports. It is most certainly at odds with the sentencing remarks.
42. I found the appellant to be a less than satisfactory witness. He clearly has no insight into his actions which led to him being given a 27 month sentence. All through he has sought to minimise his actions as can be seen by examining the version of events given to the OASys authors and the mitigation put forward on his behalf. He continues to say that he had acted in self-defence. At no point in time did the appellant state that he had attacked his ex-girlfriend and he had not said that he had got her by the throat and had said that if he could not have her then no-one could. The OASys report author states that at the time of the offence they would have assessed the appellant as having significant deficits in his thinking skills, particularly in relation to impulsivity, temper control and aggression but that in the intervening 10 years there had been no further similar incidents. I consider that as it is clear that he left the country as stated by HHJ Rees it is not possible to know what may have happened at a time when he was not in the UK so the conclusion that he had not been involved in any further incidents in the intervening 10 years is an unsafe conclusion based as it is on a lack of knowledge. I find that if the appellant had learned to correct the erroneous thinking skills that he had exhibited in the incident then he would have been able to give a far better, more insightful account of the incident and in particular he would not have sought to minimise what he had done. The attack on his girlfriend when the door was forced open by him and he pursued her upstairs to the bedroom wielding a knife at the time is far removed from the account that the appellant gave at the hearing and to other agencies following his arrest. He did not mention that he had forced his way into the premises and he attempted to place blame on the victim by saying that he had been very intoxicated whereas HHJ Rees states that the victim had been asleep. The fact that the victim sustained two wounds is an indication that it was not some sort of slip that resulted in him getting injured and it is clear that the appellant deliberately went to get a weapon not to defend himself but to attack his ex-girlfriend and her new partner."

21. One point that arises from para 42 concerns HHJ Rees' comment that the appellant had left the UK after the commission of the offence which was in 2005 before giving himself up in 2015. It was accepted before me by Mrs Aboni that that was a mistake. The appellant had not gone abroad. Instead, he had gone to live in England. His evidence was that he had not learnt about the interest that the police had in him until 2015, when he surrendered to the police, was prosecuted and ultimately convicted of the s.20 offence. I see no reason not to accept that evidence and I do so.
22. The position is, therefore, that the appellant committed a significant and serious offence of violence in what must have been quite terrifying circumstances for those others involved in 2005. He has, at least until most recently, not fully accepted the true circumstances of his offending. However, his plea of guilty on a "full facts basis" recognises, in my judgment, the circumstances of his offending. Mr Howells told me, and I accept this, that the appellant has undergone a victim awareness programme after being released from custody in April 2016.
23. The appellant has only ever, on the evidence before me, committed this single offence. The OASys Report states that his offence was somewhat "out of character" and, Mr Howells submitted, committed in the heat of passion. His risk of reoffending is stated to be low but there is a medium risk of harm to a known individual if he does reoffend. This reflects, in my judgment, the recognition that the risk of the appellant's offending exists in the domestic or personal context. In assessing whether he represents a "genuine, present and sufficiently serious threat" I must have regard to both the likelihood of his reoffending and the seriousness of the consequences if he does (see Kamki v SSHD [2017] EWCA Civ 1715 at [18]). Mr Howells submitted that, on the basis of the OASys Report, I should accept that he represents a low risk of reoffending and that this does not represent a "sufficiently serious threat" to a fundamental interest of society.
24. I do not agree. I am satisfied that the appellant represents a low risk of reoffending in the context of a personal or domestic situation where he is, perhaps, challenged by the circumstances and "loses it". The harm that he may cause, however, in such a situation is a "medium risk" and I bear well in mind the circumstances of the index offence he committed in 2005. However, I also have regard to the fact that, despite his earlier denial, he has come to accept the circumstances. He has undergone a victim awareness programme after release from custody in April 2016 and there is no evidence that he has committed any further offences since 2005. I also accept that he is now in a stable relationship with his wife and, as I will turn to shortly, he is her carer. I also note, and accept, the evidence of Tracey Graham in her report dated 12 February 2019. It was accepted that, on the basis of her experience, she was an appropriate expert to give evidence in respect of domestic violence and abuse. Having carried out an assessment of both the appellant and his wife she states that:

"Nothing ... alerted me to any concern in Mr [K] and Mrs [S]'s relationship."

25. She continued that:

"I completed formatted risk assessments ... with both of them. There were very few indicators of risk and I am confident that they were being truthful about themselves and their relationship.

Mrs [S] appears to have a full and comprehensive understanding of what constitutes abuse within a relationship. On completing my assessments there appeared to be no identifiable domestic abuse within the relationship between Mrs [S] and Mr [K]."

26. In her conclusions, Tracey Graham states that:

"I assess him of being **Standard (Low) Risk** of being a perpetrator of domestic abuse."

27. Taking into account all the evidence, including the OASys Report, the report of Tracey Graham and the appellant's conduct since the index offence in 2005, I nevertheless am satisfied that he does represent a "genuine, present and sufficiently serious threat affecting one of the fundamental interests of society" even though that threat is not imminent given the relationship he is currently in with his wife. The low risk of reoffending that, I accept, he represents, nevertheless crosses the threshold in reg 27(c) read with Schedule 1 to the 2016 Regulations. Having said that, and without diluting in any way my finding in that regard, I do accept Mr Howells' characterisation that the appellant is a "borderline case" in this regard and that that is relevant when assessing whether his removal would be proportionate.

28. I now turn to that second question.

29. The appellant is 28 years of age. He has lived in the UK since 2000. His claims for asylum were dismissed in appeals in 2003 and 2005.

30. He is married to his spouse, a Hungarian national. They met in July 2012, started living together in April 2016, and married on 27 February 2017. The sponsor has lived in the UK since 2007 except for a period between October 2012 and September 2013 when she went back to Hungary because her father was unwell.

31. I accept that their relationship is a genuine and loving one. Everything in the evidence, to which my attention was drawn, sustains the conclusion that they are in a mutually supportive relationship.

32. The bulk of the submissions before me concern the health of the appellant's wife and the role that he plays in caring for her. Mr Howells relied upon the evidence as establishing that his care was, in effect, essential or vital to her as she has been diagnosed with Parkinsonism or Parkinson's disease. Mrs Aboni, on the other hand, whilst accepting that the appellant's spouse does have health problems and that she does rely on him for some care, submitted that nevertheless it was not as great or as essential as was being claimed.

33. It is clear from reading the medical evidence submitted that since June 2018, the appellant's wife has undergone assessments which has ultimately led to a diagnosis of "probable idiopathic Parkinson's disease" (see letter of 28 January 2019 prepared by Mrs Debbie Davies, Clinical Nurse Specialist – Parkinson's disease) or "Parkinsonism" (see letter of Dr Fady Joseph, Consultant Neurologist dated 12 February 2019). It is equally clear that since the appellant's wife was first admitted to hospital in June 2018 with a suspected stroke, the diagnosis of the appellant's spouse has emerged over that time.
34. Mrs Aboni submitted that the claimed support that the appellant provided for his wife was inconsistent. In particular, she submitted that the expert report of Professor Graham dated 30 January 2019 put the support to a higher level. At para 2.5 Professor Graham stated that:
- "Mrs [S] requires assistance for all activities of daily living."
35. Then at para 3.4 and para 3.5 (mistyped as a second para 3.4) he said this:
- "Mrs [S] informed me that her husband, Mr [K] assists her with ADL (that is activities for daily living): assistance with dressing and undressing; **all** housework, including cooking, cleaning and shopping.
- Mrs [S] was unable to perform simple complex tasks involving fine motor skills."
36. At para 7.2 Professor Graham went on to state that the sponsor's wife:
- "requires constant care and supervision in routine activities of daily living ... This is currently provided by her husband ..."
37. Mrs Aboni pointed out that this report was based upon an examination on 23 November 2018. She relied upon a letter from the GP at the St David's Clinic dated 28 November 2018 which placed her needs as somewhat less when it stated:
- "There have been days where she has needed support with activities of everyday living, but more recently her symptoms have improved slightly and she is considering trying to get back to work on light duties."
38. The letter goes on:
- "She occasionally needs some support dressing and with help getting shopping into the house and other everyday tasks."
39. Mrs Aboni submitted that Professor Graham was stating the 'worst case scenario'.
40. In response, Mr Howells pointed out that Professor Graham had a copy of the GP's letter of 28 November 2018 when he prepared his report. He specifically makes reference to it at the beginning of his report (at page 27

of the supplementary bundle). He also submitted that it was unclear from the GP's letter when she had last seen the appellant's spouse.

41. In reading the GP's letter, it is important to note that her health problems are stated as:

"no doubt having an impact on her mobility in her arms and also ability to work."

It also states that the appellant's spouse has:

"had a significant amount of time off work due to these problems and we are also investigating to ensure she does not have arthritis in her hands themselves."

42. These reports have also to be seen, and considered, in the light of the more recent letters dated 28 January 2019 and 12 February 2019 (to which I have already made reference) subsequent to her diagnosis as suffering from Parkinson's disease or Parkinsonism.

43. The letter of 28 January 2019 from the Clinical Nurse Specialist is in the following terms:

"I met Ms [S] with her husband today in the clinic today. [Ms S] comes from Hungary, her husband comes from Turkey. They have both lived in the UK for a number of years. Her history goes back to June 2018 when she was admitted to hospital with concerns that she may have had a stroke. At this time she had problems with right sided limb dysfunction, with rigidity and bradykinesia and impaired dexterity affecting her right arm and right leg. She did not give a good history about gradual onset. This seemed to happen quite quickly for her. She had the usual scans in hospital and it was deemed then that she did not have a stroke. She saw Dr Malik, neurology registrar whilst on the ward who thought her symptoms were more consistent with Parkinsonism. She has since developed an intermittent tremor which was not obvious today. She has impaired sense of smell. Taste is preserved. She struggles with her right arm and stiffness and is struggling to use it. She is currently on the sick as she works in a paper printing industry which is fast pace and she has been unable to continue and cannot see herself continuing in the future. She is worrying about her long term future and her work as presently she feels she is unable to maintain any form of work due to her current symptoms. There is no family history to note.

On examination she had lack of arm swing on her right side whilst walking. She was rigid and had bradykinesia affecting her right side more than her left. There was dexterity difficulties on her right side and bradykinesia present.

Dr Joseph started her on Sinemet in November however she has not seen a great response as she has been taking it morning, afternoon and night time which I have discouraged her from using it this way however she did develop some lumps on her back and has not felt that it has really helped but has also reduced her dose due to the side effects.

I have explained symptoms of Parkinson's today and tried to help reassure her. She has asked me about Lyme's Disease. She is not convinced that she has Parkinson's disease. She does however have symptoms consistent with Parkinson's disease on reviewing her today.

I have decided to stop Sinemet and replace with Madopar to try and rebuild her confidence to see if medication will be helpful. She will need to increase the dose. We have discussed long term use of Dopamine agonist and the use of Rasagiline for future management. I will arrange some physiotherapy to see if we can build some confidence with her gait and her walking her ability to regain using her right side with the addition of medication which I think will both be helpful.

I will see her again in two months to see the effect of medication.”

44. The impact of her illness is readily apparent. It is not difficult to see that she requires support in her daily living activities and that, not unnaturally, this is provided by her husband, the appellant.
45. The second letter, dated 12 February 2019, also speaks to her everyday difficulties and that the appellant is providing “significant support” for her:

“She currently lives with her husband who is providing her with significant support.

Mrs [S] has struggled in coming to terms with the diagnosis and also physical effect that it has had upon her. Her husband has been most useful in this respect and I would be very grateful if you could consider this in his application to remain in the UK.”

46. Mr Howells also referred me to the report of the social worker, Angeline Seymour dated 21 December 2018 (at page 34 of the supplementary bundle) where at pages 42 and 43 she dealt with the circumstances of the appellant’s spouse as follows:

“Since the onset of her symptoms, Mrs [S] told me that her husband has taken on the role of her carer. When asked how her recent diagnosis and symptoms are affecting her daily living, Mrs [S] explained that as soon as she wakes in the mornings she experiences pain and stiffness in her right side. Owing to the pain she experiences, Mrs [S] struggles to get out of bed and on occasion Mr [K] has to assist her to transfer from the bed and walk to the bathroom. Mrs [S] also explained that in the past she has experienced crippling back pain, which has meant that she has been unable to walk, resulting in her resorting to crawling along the floor. In addition to this, Mrs [S] told me that she now feels unsteady on her feet and so relies on Mr [K] being around to assist and support her when walking.

Mrs [S] described being able to make herself a hot drink as long as the kettle is only half full so she can safely lift it. She is also able to make herself a small snack, as long as she does not have to handle sharp or hot utensils. Mrs [S] informed me that she is unable to use the cooker; owing to her poor dexterity she cannot safely hold hot or heavy pans. She also told me that she cannot open the oven door safely. Her poor dexterity and balance has left her feeling unsafe and too scared to use the cooker as she is afraid dropping hot substances on to herself. The poor grip and dexterity in her hand has also left Mrs [S] being unable to look or unlock their front door, something that leaves her at risk if left alone in the property.

Mrs [S] told me that she has lost her confidence since the onset of her symptoms and owing to this she only goes out of the flat with her husband. When out, Mrs [S] described struggling to get notes and small change from her purse and is unable to walk long distances, needing to rest frequently.

She also described walking, *'very slowly owing to dizziness,'* is unsteady on her feet as she struggles, *'to move them.'*

When I arrived at the couple's flat Mrs [S] was resting in the bedroom. I was able to observe Mrs [S]'s difficulty in walking when she joined me in the lounge area. I observed her to walk very slowly with a stiffness in her limbs and rigidity in her legs. When I shook her hand, her grip was very weak.

While discussing her current symptoms, Mrs [S] presented as very tearful and low in mood. She described feeling frightened, her sleep being of poor quality as she is constantly ruminating about her diagnosis and she estimated only sleeping up to three hours a night. She described that initially her poor sleep pattern was due to the pain she was experiencing, however, more recently this is due to worrying. She told me that she is now worrying about Mr [K] being removed from the country and being unable to look after herself in his absence. She said that the thought of this leaves her feeling hopeless, helpless and depressed."

47. The appellant's spouse, herself, deals with the support she receives from her husband at paras 8 and 9 of her witness statement dated 28 January 2019 as follows:

"8. The reality is that I cannot function correctly without him. He is my husband and carer. He has also found suitable employment in the evening allowing him to care for me during the day and deal with the medical appointments, then work the evening shift to cover the costs of living.

9. I am unable to function without my husband should he be taken away, it would be the end of my marriage. I am unable to carry out basic task at present. The Doctors diagnosed my condition as Parkinson Disease which is permanent. As I would get older the more care an attention I will require and I wish this to be from my husband."

48. On a balance of probabilities, I am satisfied that the appellant's spouse requires significant and substantial daily support because of the consequences of her Parkinson's disease or Parkinsonism and that that is provided by her husband, the appellant. I was not addressed on the availability of alternative care if the appellant were removed. Mrs Aboni did not submit that, if the appellant were providing the required care, that could be equally provided by others. No doubt some care and support could be provided, but the level of care and sensitivity of the need for support for her Parkinson's disease or Parkinsonism, makes it, in my judgment, most appropriately provided by her husband. The implication of removing that support would, in my judgment, have a substantial and deleterious impact upon the wellbeing and health of his wife.

49. There was no suggestion, in the submissions before me, that the appellant's spouse could or should go to Turkey to live with the appellant.

50. Mr Howells submitted that the appellant, although he has family in Turkey (namely parents and two siblings), he is only in contact with his sister.

51. In assessing the proportionality of refusing the appellant a residence card on the grounds of public policy, I take into account all the circumstances:

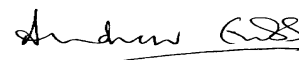
in particular, his low risk of offending; his conduct and behaviour since committing the offence in 2005; that he has lived in the UK since 2000 and, since 2007, has been married to an EEA national; that he has family in Turkey but that he has little or limited contact with them; and I take into account that he is the primary carer and person providing support to his spouse (the EEA national) in her struggle to manage her health on a daily basis suffering from Parkinson's disease or Parkinsonism. I accept, as I have already said, that his support is the most appropriate and without it the impact upon his spouse is likely to be significant and substantial given that there is no real possibility (and it could not seriously be contemplated given her circumstances), that she should go to Turkey with him.

52. Balancing, therefore, the "genuine, present and sufficiently serious threat" which the appellant represents against all the circumstances, I am not satisfied that the Secretary of State has established that the decision is proportionate to achieve that aim.
53. For these reasons, the Secretary of State has failed to establish that the decision to refuse the appellant a residence card on the grounds of public policy is justified under EU law. Accordingly, the appellant's appeal is allowed under the Immigration (EEA) Regulations 2016.

### **Decision**

54. The decision of the First-tier Tribunal to dismiss the appellant's appeal was set aside by the decision of UTJ King dated 13 December 2018.
55. I remake the decision allowing the appellant's appeal under the Immigration (EEA) Regulations 2016.

Signed



A Grubb  
Judge of the Upper Tribunal  
15 May 2019



**TO THE RESPONDENT**  
**FEE AWARD**

As I have allowed the appeal, I make a fee award in respect of any fee paid or payable in respect of the appellant's application.

Signed

A handwritten signature in black ink, appearing to read "Andrew Grubb", with a horizontal line underneath it.

A Grubb  
Judge of the Upper Tribunal  
15 May 2019